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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/769,076	01/25/2001	Michael D. Krysiak	P/35-4	7143

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EXAMINER

VALENTI, ANDREA M

ART UNIT

PAPER NUMBER

3643

DATE MAILED: 07/17/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/769,076

Applicant(s)

KRYSIK ET AL.

Examiner

Andrea M. Valenti

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 May 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 26-30, 32, 36-42, 45, 47 and 50 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

- 5) ☐ Claim(s) _____ is/are allowed.

- 6) ☒ Claim(s) 26-30, 32, 36-42, 45, 47 and 50 is/are rejected.

- 7) ☐ Claim(s) _____ is/are objected to.

- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

PETER M. POON
SUPERVISORY PATENT EXAMINER
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Pml

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 January 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

Drawings

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference sign(s) not mentioned in the description:

- 1.) None of the reference signs were mentioned in the specification.

Correction is required.

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the mulch must be shown or the feature(s) canceled from the claim(s), none of the figure flow charts nor the Brief Description of Drawings section of the specification identify mulch. No new matter should be entered.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 39-42 and 45 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The specification fails to teach how one of ordinary skill in the art is to determine the acidity, moisture content, or chemical content merely by the fragrance of the mulch.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 47 is rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 3,252,785 to Frank D. Hoblit.

Regarding Claim 47, Hoblit discloses a colored mulch product consisting essentially of a material comprising a fiber cellulose, clay, loam, sand, and/or a combination of same (Col. 2 line 17-19); a binding agent (Col. 5 line 15-25, Col. 8 line 5-6); a environmentally friendly dye and/or pigment (Col. 3 line 22-24), and the colored mulch product is produced by an agglomeration operation (Col. 3 line 59).

Claim 39 is rejected under 35 U.S.C. 102(b) as being anticipated by United Kingdom Patent GB 2170795A to Rudolf.

Regarding Claim 39 and 42, Rudolf teaches applicant's broad claim language since Rudolf discloses a mulch with horse and poultry manure as a component (Rudolf abstract and page 1 line 37). This manure component inherently has a fragrance associated with it and the fragrance will inherently indicate to a user environmental conditions/chemical content of the soil where the mulch is placed since over time the fragrance will dissipate and fade as the mulch ages indicating that the manure nutrients have decreased and been absorbed into the soil.

Regarding Claim 40 and 41, Rudolf teaches the use of animal manure along with stable material. The stable material also contains animal waste in the form of urea. Urea is known to be strongly acidic and fragrant. The incorporation of these components into the mulch of Rudolf inherently teaches that one of ordinary skill in the art would be able to determine the acidity of soil from the fragrance since a strong fragrance would indicate that the manure/urea is present in the mulch and over time as the fragrance naturally weakens the manure/urea nutrients are absorbed into the surrounding soil. Similarly with the moisture content, one of ordinary skill in the art would inherently be able to determine the moisture content since it is old and well-known in the art of mulches that a saturated wet mulch (thus a high soil moisture content) smells different than a dry mulch (thus a low soil moisture content).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 36 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 3,252,785 to Frank D. Hoblit in view of U.S. Patent No. 4,067,140 to Thomas.

Regarding Claim 36, Hoblit teaches a colored mulch product of a fiber cellulose, clay, loam, sand and/or combination (Hoblit Col. 2 line 17-19), a binding agent (Hoblit Col. 5 line 15-25, Col. 8 line 5-6), a black or dark dye (Hoblit Col. 3 line 30). Hoblit does

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not explicitly teach that a black mulch heats the soil. However, Thomas teaches that it is an old and well-known function of a mulch layer to heat the soil (Thomas Col. 1 line 9). Furthermore, it is old and well-known in the art of heat transfer that the color black has an emissivity of one. Therefore, the black dye of Hoblit would inherently heat the soil where the mulch was placed when exposed to sunlight.

Claim 37 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 3,252,785 to Frank D. Hoblit in view of Japanese Patent JP06-245654 to Yoshinobu.

Regarding Claim 37, Hoblit teaches a colored mulch product of a fiber cellulose, clay, loam, sand and/or combination (Hoblit Col. 2 line 17-19) and a binding agent (Hoblit Col. 5 line 15-25, Col. 8 line 5-6). Hoblit is silent on a white or light dye that reflects sunlight and reduces heating of soil. However, Yoshinobu teaches dying mulch white to reflect sunlight (Yoshinobu English abstract). It would have been obvious to one of ordinary skill in the art to apply the teachings of Yoshinobu to Hoblit for the enhanced heat transfer qualities taught by Yoshinobu to promote plant growth and reduce weeds.

Claim 45 is rejected under 35 U.S.C. 103(a) as being unpatentable over United Kingdom Patent GB 2170795A to Rudolf in view of U.S. Patent No. 5,105,577 to Hedges.

Regarding Claim 45, Rodulf is silent on applying a scent similar to a flower of a seed planting in mulch. However, Hedges teaches applying a scent to a mulch (Hedges Col. 3 line 65). The mulch of Hedges could surround the seed/seedling of a pine tree or a lemon tree. It would have been obvious to one of ordinary skill in the art to modify the teachings of Rodulf in order to obtain a "more" pleasant smell and by selecting a scent similar to the seed planted one of ordinary skill in the art achieves a harmonious smell.

Claims 26-30 and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 3,252,785 to Hoblit in view of U.S. Patent No. 6,029,394 to Kananen et al.

Regarding Claims 26-30, Hoblit teaches a colored mulch product of a material comprising a fiber cellulose, clay, loam, sand; a binding agent; a fertilizer; and a dye/pigment (Hoblit Col. 2 line 17-19; Col. 5 line 15-25, Col. 8 line 5-6; Col. 6 line 65). Hoblit is silent on the dye indicating to the user environmental conditions of soil where the mulch is placed. However, Kananen et al teaches that measuring the color of a compost is an old and well-known means of determining the chemical and environmental conditions (Kananen et al Col. 8 line 18 and 23-24). It would have been obvious to modify the teachings of Hoblit with the teachings of Kananen et al as a non-evasive means to monitor the levels in the soil to assure proper dosages are applied to promote plant growth.

Regarding Claim 38, Hoblit inherently teaches the same or similar color of an actual plant, flower, fruit or vegetable of a seed planted with the mulch since Hoblit

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teaches the use of a green dye (Hoblit Col. 3 line 30) and predominately all plants have green colors in the stem, leaves, etc.

Claims 26-30, 32, and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 3,252,785 to Hoblit in view of U.S. Patent No. 4,126,417 to Edwards.

Regarding Claims 26-28, 30, and 50, Hoblit teaches a colored mulch product of a material comprising a fiber cellulose, clay, loam, sand; a binding agent; a fertilizer; and a dye/pigment (Hoblit Col. 2 line 17-19; Col. 5 line 15-25, Col. 8 line 5-6; Col. 6 line 65). Hoblit teaches that fertilizer is a component of the mulch, but Hoblit is silent on the dye indicating to the user environmental conditions of soil where the mulch is placed. However, Edwards teaches both applying a colored fertilizer to a mulch and in addition using a color identification means to determine the environmental and chemical content of the soil (Edwards abstract and Col. 1 line 10, line 27-28). As the fertilizer component of the mulch dissolves into the soil the color of the mulch is inherently going to change and fade over time thus indicating a change in the soil conditions. It would have been obvious to one of ordinary skill in the art to apply the teachings of Edwards to the teachings of Hoblit since it is old and well-known in the art of agrochemicals to color the chemicals so one can easily identify an area that has received treatment and to identify what chemical was applied. Furthermore, it would have been obvious to one of ordinary skill in the art to modify the mulch of Hoblit with the indicating means of Edwards as a non-evasive means of monitoring the soil's acidity and moisture content.

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Regarding Claim 38, Hoblit as modified inherently teaches the same or similar color of an actual plant, flower, fruit or vegetable of a seed planted with the mulch since Hoblit teaches the use of a green dye (Hoblit Col. 3 line 30) and predominately all plants have green colors in the stem, leaves, etc.

Regarding Claim 32, Hoblit as modified is silent on the dye being fluorescent allowing the mulch to glow in the dark. However, it would have been obvious to one of ordinary skill in the art to modify the teachings of Hoblit since the modification is merely a change in color and the selection of a known material for intended use to prevent people from walking on the treated area in the evening and for an aesthetic effect and does not present a patentably distinct limitation.

Response to Arguments

Applicant's arguments with respect to claims 26-30, 32, 36-42, 45, 47, and 50 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the

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shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrea M. Valenti whose telephone number is 703-305-3010. The examiner can normally be reached on 7:30am-5pm M-F; Alternating Fridays Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 703-308-2574. The fax phone numbers for the organization where this application or proceeding is assigned are 703-306-4195 for regular communications and 703-305-0285 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-4357.

AMV
July 12, 2002


PETER M. POON
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TECHNOLOGY CENTER, S.W.